

REMARKS

Applicants representative acknowledges the Examiner's finding of the patentable distinctness between two species. According to the Examiner:

Specie 1 is disclosed in FIG. 3; and

Specie 2 is disclosed in FIG. 4.

In response, Applicants, through their representatives and attorneys, hereby provisionally elect Specie 1 with traverse. It is submitted that Claims 1-14, 16-22, 24, and 25 read on Specie 1. Moreover, contrary to the statement made in the Restriction Requirement, it is readily apparent that at least Claims 1-5, 8-12, 16-20, and 25 are generic claims that read on each of Species 1 and 2. This election is with traverse for at least the following reasons.

Reasons for Traversal

Initially, Applicant wishes to point out that this traversal is not an admission that any or all of the cited species are not independent, nor that any or all of the cited species are not patentably distinct from one another. However, Applicant does submit that the independent and patentably distinct species are related under the particular disclosure. Where, as here, "inventions as disclosed and claimed are both (A) species under a claimed genus and (B) related, then the question of restriction must be determined by both the practice applicable to the election of species and the practice applicable to other types of restrictions such as those covered in MPEP § 806.05 – 806.05(i)." See M.P.E.P. § 806.04(b). In accordance with this practice, when several patentably distinct inventions are disclosed as being related, the Examiner must establish reasons for insisting upon restriction. In particular, reasons for insisting upon restriction must be shown by an explanation of: (1) separate classification; (2) separate status in the art when classifiable together; or (3) a different field of search. See M.P.E.P. § 808-808.02. Applicants submit that such an explanation has not been provided, and further submit that one cannot be so provided.

Conclusion

In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the Election Requirement set forth in the above-noted Election/Restriction Requirement, and further request examination of all of the presently pending claims.

Respectfully submitted,

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